

HEARING ON PROPOSED AMENDMENTS TO THE
FEDERAL MILK MARKETING ORDER FOR THE
MIDEAST MILK MARKETING AREA, 7 CFR PART 1033

Docket No. AO-166-A72
DA 05-01

Wooster, Ohio
March 7-10, 2005

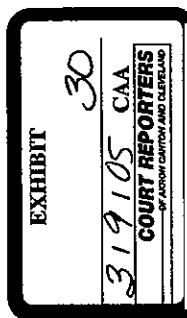
Testimony of Jeff Leeman
For White Eagle Cooperative Federation (and its constituent members);
Superior Dairy, Inc., United Dairy, Inc., Family Dairies USA; Dairy
Support, Inc; Guggisberg Cheese; and Brewster Cheese.

My name is Jeff Leeman. I am employed as General Manager of Dairy
Support, Inc., a corporate subsidiary of T.C. Jacoby and company, which is
dedicated to provide services to small cooperative associations and handlers
operating a federally-regulated environment, including accounting, pool
compliance, and risk management assistance.

Prior to February of this year, I was employed as Executive Vice President
of Brewster Dairy/Stockton Cheese, and responsible for coordination and
procurement of milk, pooling agreements, cheese procurement from other
manufacturers, and oversight of Brewster's transportation fleet. I previously
served as a Brewster dairy farm specialist serving Brewster's independent
patrons.

I received a BS degree in Agriculture from The Ohio State University in
1989, and have had responsibilities for Brewster's interests in federal milk
marketing order regulation since my early employment with the company,
including presenting testimony at the hearing for component pricing in Ohio
in the early 1990's.

I present this testimony on behalf of White Eagle and others in opposition to
DFA/MMPA proposal No. 2. The proposed rules, as designed and intended,
would shrink the market share of small cooperatives not affiliated with DFA
by raising its competitor's costs or reducing competitor revenues.



White Eagle Milk Marketing Federation was organized in 2003 to provide independent dairy farmers and cooperatives with a small share of the Mideast milk market, with an efficient and effective option to market milk to Mideast plants without turning their milk supplies over to DFA, DMS, or one DFA's other marketing agencies in common. The Federation began with the formation of White Eagle Cooperative Association by independent dairy farmers in Indiana, Ohio and Michigan. To maximize marketing efficiencies, following the organizational lead of DMS, White Eagle and other cooperatives joined together to create the White Eagle Federation, an Indiana corporation. The White Eagle Federation finds its customers among the few remaining milk plants that are not committed to DFA and its affiliated agencies for a full supply.

Today, the White Eagle Federation markets about 150 million pounds of milk each month under Order 33 for producer-members of White Eagle Cooperative Association, Alto Dairy, Scioto Cooperative, Erie Cooperative Association, and non-member dairy farmers. White Eagle Federation supplies milk to distributing plants in Ohio (United Dairy and Superior Dairy) and West Virginia (United Dairy), and sells surplus milk to manufacturing plants in Ohio, Indiana, Michigan, Wisconsin, and elsewhere.

Although United Dairy and Superior Dairy are located at some distance from Federation member farms in Michigan, Indiana and Wisconsin, it is necessary to travel this distance because closer distributing plants in Indiana, Michigan and Ohio are fully supplied by others, primarily DFA and its agency affiliates, and therefore not available to our dairy farmers. Over the past twenty-five years, marketing choices available to producers have been radically reduced as the result of fewer plants, plant ownership consolidation, and cooperative association consolidation. As shown in Attachment 1, distributing plants in the market have declined from 78 to 42 since 1989, and supply plants from 19 to 3. Many of the nation's largest distributing plants are now under ownership of Dean Foods, National Dairy Holdings, Kroger and others who account for a lion's share of distributing plant volume in the Mideast. Attachment 2; and Ex. 11, Tables 1 and 2.

Cooperative consolidation has also severely limited marketing choices. Describing the structure of the Mideast Marketing Area, USDA's 1999 milk order reform decision observed that as of December 1997, 20 cooperative

associations pooled milk under the 5 orders to be consolidated (considering MMI and DFA as one entity – DFA). The percentage of cooperative member milk pooled varied from 44% in Order 36 (E. Ohio-W. Pa) to 86.5% in Order 40 (So. Mich). Today in Order 33, there are eleven 9(c) cooperatives (Exhibit 6, table 1), and fewer than nine cooperatives reporting as pooling handlers (testimony of Sharon Uther). The largest three cooperatives pooled 83% of the market's milk in September 2004 while the remaining cooperatives pooled 11.5%. Independent patron milk pooled by distributors accounted for only 6.5% of pool milk. Ex. 11 Tables 5 and 17; and Ex. 6, Table 5.

The three largest cooperatives or federations pooling milk in Order 33, we believe, based on Exhibit 11, Tables 3 and 17, are: (1) DMS (pooling handler for DFA, Dairylea, FDUSA, former Dean Foods patrons, and a number of pay-to-pool manufacturing plants), (2) Michigan Milk Producers Association, and (3) White Eagle Milk Marketing Federation – a distant third. Based on White Eagle Federation's own records, estimates of MMPA production from its website and from Hoard's Dairymen's annual report of cooperative rankings, and DFA's website information (Attachment 3), we estimate approximate monthly Mideast pool volumes of 9(c) cooperatives or federations to be as follows:

	Million lbs	% of pool
Total pool	1,336	100
Total 9(c) milk-----	1,249	93
DMS/DFA -----	700	52
MMPA -----	250	19
White Eagle -----	145	11
All other 9(c) milk -----	154	12

Even these estimates, however, understate the market domination of DFA, because it does not account for milk in the "all other" category marketed by DFA and marketing partners affiliated through marketing agencies in common that are not "9(c)" cooperative federations (like White Eagle and DMS) for pooling purposes. These include: (1) the Mideast Milk Marketing Agency (MEMMA), a combination of DFA/DMS, Foremost Farms, Land O'Lakes and NFO that gain pooling base for constituent members by sales to distributing plants in Indiana, Ohio, and Western Pennsylvania –

including the large, multi-plant operations of Dean Foods, Kroger, and NDH, and (2) the Producers Equalization Committee (PEC), a combination of MMPA and DFA/DMS, and other cooperatives that gain pooling base by sales to Michigan Distributing plants.

Proponents of Proposal 2 have said that one of their primary objectives is to cause the disassociation from the pool of “distant” milk from Wisconsin, Illinois, Minnesota and Iowa that has not historically been associated with the Mideast. This stated purpose is impermissible as a matter of law and inconsistent with past regulatory policy, which we will brief; plain wrong on the historical facts; and conveniently disregards “distant” milk newly associated with the market from the northeast – an area in which DFA’s market share and sphere of influence is greater.

Milk from Wisconsin and Illinois has for many decades been shipped to and pooled on the Mideast Order and its predecessors, though the volume has ebbed and flowed as economic incentives varied, as shown in Attachment 4.

Alto Dairy, a White Eagle Federation member cooperative, as well as Family Dairies USA, have marketed Wisconsin milk to the Mideast and predecessor orders, included in Attachment 4 data, for decades. Federal Order prices and price differences have contributed to this ebb and flow, as they should. In USDA’s “Amplified Decision” from national milk order hearings in 1990, responding to a Minnesota federal court opinion, USDA explained:

“Producers make their production and marketing adjustments on the basis of changes in blend prices and differences in blend prices among orders. It is not uncommon for supply areas of individual orders to expand or contract in response to blend price changes over time. Also, because milk is free to move to handlers regulated under different orders, it is not uncommon for milk to shift from one order to another in response to blend price differences that result from changes in supply and demand conditions under different orders.”

59 Federal Register 42422, 42426 (August 17, 1994).

Family Dairies’ historical association of Wisconsin Milk with the Southern Michigan market, indeed, was the subject of litigation in the early 1990s reported in two 7th Circuit opinions when Family Dairies was known as Farmers Union Milk Marketing Coop. At issue in those cases was a

reduction in the blend price payable to producers in Wisconsin by an increase in the Southern Michigan negative location adjustment. When the blend price dropped, so did Farmers Union milk pooled in Southern Michigan. Price discrimination between producers by location adjustment is expressly authorized by the Act (as our attorney will brief), and was proposed by Continental Dairy for this hearing to address perceived problems with so-called "distant milk" pooled on the order. Although White Eagle Federation supported putting this issue on the table, USDA declined to include the Continental proposal in its notice of hearing. Attachment 5. USDA's decision to foreclose even genuine debate on this alternative remedy to a perceived problem is inconsistent, we believe (and will further argue on brief), with its obligations to small business entities under the Regulatory Flexibility Act and Executive Orders implementing that Act to consider least burdensome alternatives if a regulatory burden adversely affecting small businesses is to be imposed at all.

Who are those who would be affected by the new burdens proposed by DFA and MMPA, now joined by DairyLea (a DMS marketing partner of DFA) and NFO?

A net gain to DFA: Although the rule is facially one of general applicability, it would not, we believe, create new burdens for proponents because the proponents have a virtual lock on pooling base by full supply contracts to the markets major distributing plant handlers, as illustrated by a twenty-year supply agreement between DFA and Dean Foods to which reference is made in Dean Foods' annual report filed with the SEC, and reproduced on Dean Foods' website and the SEC website. The agreement, which includes liquidated damages of up to \$96 million to DFA should Dean renege on its commitments to buy raw milk from DFA, was sweetened for DFA by Dean's payment of \$28.5 million in the fourth quarter of 2001. We have not been told of the details of the Dean/DFA deal, although it is highly relevant to this proceeding. We do recall, however, that early in the first quarter of 2002, Dean announced that it would no longer be in the milk procurement business and turned its independent producers over to DFA/DMS for marketing, pooling and field services. We believe that DFA would benefit from the proposed rule change in a number of ways beyond the "mere" PPD increase of 2 cents per hundredweight as illustrated in Exhibit 7, Request 21.

Because DFA and its marketing allies have pooling base to spare, adoption of proposal No. 2 would increase the value of pooling base to DFA, and cost to its raw milk competitors, due to sale of pool access. Typically, as I have learned from a number of sources, DFA will "market" access to the pool to manufacturers for a split between DFA and the manufacturer of the PPD value of pooling on Order 33. That is, the difference between the Order 33 PPD and the Order 30 PPD. Accommodation pooling of this nature is reflected in Exhibit 15 transportation invoices from various sources in Wisconsin and Minnesota. It is this type of accommodation pooling by DFA, I believe, that explains a gradual "return" to the Order 33 pool of milk from the Upper Midwest after Order 33 was last amended effective August 2002. The significant increase since 2002 in milk from "distant sources" (as illustrated in Exhibit 7 (request 1a) and Exhibit 11 Table 24) cannot be explained by new milk added to the pool by the White Eagle Federation.

If the Upper Midwest pooling provisions are also tightened, as DFA has requested, the value of accommodation pooling may increase to the difference between the Mideast PPD and the Class III price, because there may otherwise be no pool alternative for milk. Another competitor response of benefit to DFA, of course, is that the competitor (having no other choice) will join DFA or a DFA marketing partner, and gain pooling at the expense of losing marketing choices that should be protected by the Secretary under the Agricultural Fair Practices Act.

A loss to White Eagle Federation and other small cooperatives:

While DFA would gain 2 cents in PPD prices from its proposed rule, and gain immeasurably more by the rule's effect on market power, White Eagle and the few other smaller competitors of DFA would suffer higher costs, lower revenues, and loss of marketing choices far beyond the 2 cent consequence to the pool. Yes, White Eagle's small share of the fluid milk market, and its lack of "pool" manufacturing plants to receive milk treated as a pool plant receipt rather than a diversion, makes it inevitable that its diversions of milk will represent a larger share of White Eagle's pool milk than that of DFA and its marketing partners. White Eagle would have to disassociate milk from the pool (or perhaps more aggressively seek to displace DFA, if that is possible, in some of its accounts) if proposal 2 is adopted. Though the proposal calls for a reduction of 10% in allowable diversions in the fall, the actual consequence is a reduction of 50% in the

volume of milk for manufacturing uses that can be pooled. At the current time, 10 million pounds of pooling base (sales to distributing plants) allows a section 9(c) cooperative to pool 25 million pounds of milk – 15 million pounds (60%) for manufacturing use by nonpool plants. If proposal 2 is adopted, only 20 million pounds could be pooled, with 10 million pounds (50%) diverted to the region's manufacturing plants. It makes no difference whether such plants are within or outside of the Mideast Marketing Area. For the hypothetical cooperative having maximum diversions in September 2004, this would have meant a loss of up to 73 cents per hundredweight (the September PPD, Ex. 7 Request 21) on 50 million pounds representing 20% of the cooperative's milk supply. For members of the cooperative as a whole, this loss would mean a revenue reduction of 14.6 cents/cwt. on all milk. The Secretary should not, we believe, allow milk order amendment proceedings to be used as a tool to gain market power for dominant handlers where non-order means, whether fair or foul, have failed to eliminate small competitors from the market place.

Now, I wish to say just a few words on the "depooling" proposals. We endorse the views expressed by AMPI, Land O'Lakes, Foremost Farms USA, and First District Association in their post-hearing brief following the Central Market hearing, including: (1) that alternatives to pooling penalties, such as an adjustment of the timing of Class III and IV price announcements should be considered; (2) that the issue should be addressed nationally so that all orders (if any) will be amended simultaneously to prevent multi-regional cooperatives from parking milk in an unaffected nearby order (such as Orders 5 or 7) to avoid the penalties, as happened in Order 33 with Northeast milk last June and July; and (3) the long-term practice of depooling, combined with the uniquely new nature of the proposed rules, compels rejection of proponent's request to skip the procedural benefit of a recommended decision and consideration of exceptions before rendering a final decision. A recommended decision need not be delayed, but a final decision on a new regulatory concept of depooling penalties should not be rendered until the industry and the Secretary have the benefit of comments on a proposed rule before the concrete is dry.

As the DFA/MMPA/Dairylea/NFO witness admitted, depooling is not new or recent. It has been common practice since 1989, as reported in USDA's annual Federal Milk Order Market Statistics. What is new is the recent degree of price volatility. Cheese prices on the CME have been bid up

rapidly, and then drop rapidly. Recent newspaper articles, reporting admissions by DFA's CEO and sources with inside CME information, indicate that DFA was the sole bidder causing rapid CME cash cheese price increases, and DFA's withdrawal from CME bidding produced a predictable collapse in cheese and milk prices. Although long-term maintenance of artificially high prices on the CME is probably not possible, short-term volatility may be created by a deep-pocket buyer who will enjoy secondary gains in short-term milk prices. Before amending milk orders at DFA's request due to the recent experience of short-term and extreme price volatility, USDA should investigate whether the cause of new price volatility was manipulation of the CME by DFA or any other buyer, and whether CME manipulation also manipulated USDA's milk order rulemaking process.

There are other defects in the proposals of DFA/MMPA, Dean Foods and others that create inequitable, unequal, and unfair burdens following the depooling of milk. These aggravate the competitive problems I have discussed in response to proposal 2.

For example, the proposal severely limits the ability of small Order 33 cooperative handlers to increase producer membership and milk volume from existing sources within the pool whether the handler depooled milk or not. Proposed Section 13(e)(2) would allow an increase in producer pounds above 115% of the prior month only if the milk came from producers continuously pooled on "any other" federal order, but apparently not from this order. Because of the small size of several cooperatives in the market (Ex. 11 Table 17), this part of the proposal uniquely burdens such small cooperatives and their small business farmer members.

Proposed Section 13(e)(1) provides a penalty-avoidance opportunity uniquely benefiting DFA and its marketing partners by exempting from any penalty milk shipped to a distributing plant. With its large distributing plant customer base, multi-regional markets and expansive supply system, DFA more than any other handler in the market, could simply switch otherwise disqualified milk to distributing plants and temporarily pool any excess on a market unaffected by depooling penalties. This does not mean that the milk would physically leave the Mideast, but rather that it would touch base in the closest available order and be diverted back to manufacturing plant customers in the Mideast, as before, without being subject to a depooling

penalty beyond the cost of touching base elsewhere, offset by any higher blend price on the order in which the milk is paper-parked for three months.

Thank you for your attention. That concludes my testimony.

ATTACHMENT 1

Mideast Milk Marketing Area* Number of Handlers Plants 1989, 1995, 2000, 2003 and 2004

	-- 1989 --	-- 1995 --	-- 2000 --	-- 2003 --	-- Dec 04 --
Handlers*	111	78	38	33	33
Supply plants	19	10	7	7	3
Distributing Plants	78	64	48	45	42
Distr. Plant Handlers					22

* Aggregated information 1989 and 1995 for Mich. U.P., So. Mich, Indiana, Ohio Valley and E.Oh.- W.Pa. Handler numbers for 1989 and 1995 are simple totals, and may be counted more than once for cooperatives that were handlers in multiple markets. Source: USDA, Federal Milk Order Market Statistics, Annual, and Exhibits 6 (Table 1) and 11

Fluid milk plants and pool manufacturing plants operated in the federal Mideast milk marketing area by the largest milk and dairy companies: Source - The Dairy 100 List

<http://www.dairyfoods.com/FILES/HTML/PDF/Dairy100Table2004.pdf>

For the 11th annual Dairy 100, Dairy Foods solicited the top companies in the industry through emails, faxes, and phone calls. In cases where the company did not wish to divulge dairy-specific sales figures, estimates were made using financial report information, and industry experts. The sales figures are for dairy products or products dairies could make. That means juice and non-dairy creamers are counted, but pizzas, pickles and coffee are not.

	COMPANY	LOCATION	DAIRY EXECUTIVE	TYPE	PARENT CO./SUBSIDIARIES	FY END	SALES '03	SALES '02
1.	Dean Foods Co.	Dallas, TX	Gregg Engles, Chairman/CEO	Po	S-Dean Dairy Group, Dean National Brand Group, White Wave, Horizon Organic, Dean Specialty Foods Group	12/31/03	8,260	8,120

DEAN FOODS : Total US milk plants: 105

Plants in Mideast federal milk order marketing area:

Indiana: Schenkel's All Star Dairy, Huntington (fluid); Dean Foods, Rochester (multiple products);

Kentucky: Louis Trauth Dairy, Newport (multiple products); [**other Kentucky plants:** Dean Foods, Louisville (multiple products); Ryan Foods Co., Murray]

Michigan: Liberty Dairy, Evart (fluid); Melody Farms, Detroit; Country Fresh, Flint (multiple products); Country Fresh, Grand Rapids (multiple products); Country Fresh, Livonia (fluid and frozen)

Ohio: Reiter Dairy, Akron (ice cream, milk); Broughton Foods, Marietta (cultured); Reiter Dairy, Springfield (fluid); Frostbite, Toledo (novelties, ice cream); Oklahoma: Borden, Tulsa (cultured and fluid);

Pennsylvania: Meadow Brook Dairy, Erie (milk); [**other Pennsylvania plants:** Fairmont Products, Belleville (cultured and ice cream); Lehigh Valley Dairies, Lansdale (fluid); Wengert's Dairy, Lebanon (fluid); Lehigh Valley Dairies, Schuylkill Haven (fluid); Dean Foods, Sharpsville (fluid)]

6.	National Dairy Holdings LP	Dallas, TX	Allen Meyer, Chairman/CEO	Pr	50% owned by Dairy Farmers of America	12/31/03	2,152	2,300 ^A
----	----------------------------	------------	---------------------------	----	---------------------------------------	----------	-------	--------------------

Brands: Borden, Meadow Gold, Cream O' Weber, Dairy Fresh, Flav-O-Rich, Statton, Velda and others **Plants (20):** Alabama, Dairy Fresh, Cowarts, Greendbro, Pritchard; Colorado Sinton, Colorado Springs; Florida, Velda Farms, Miami & Winter Haven (fluid); Kentucky, Goldenrod, Madisonville (fluid) Flav-O-Rich, London, (fluid); Louisiana, Borden LaFayette, (fluid) Dairy Fresh, Baker, Mississippi, Dairy Fresh, Hattiesburg, Ohio, Dairyman's, Cleveland (fluid); H. Myer, Cincinnati (fluid); South Carolina Coburn, H. Charleston (fluid); Tennessee, Chatanooga Dairy, Chattanooga, Texas Borden, Austin, Conroe & Dallas (all fluid); Utah, Cream O' Weber, Salt Lake City (fluid); Virginia, Valley Rich, Rounoke (fluid) (18 plants sold to HP Hood in 2004)

NDH PLANTS IN THE MIDEAST MARKETING AREA

Ohio, Dairyman's, Cleveland (fluid); H. Myer, Cincinnati (fluid);

7.	Kroger Co. Dairy Operations	Cincinnati, OH	Geoffrey Covert, pres. manufacturing	S	The Kroger Co.	2/2/03	2,000*	1,900
----	-----------------------------	----------------	---	---	----------------	--------	--------	-------

Brands: Kroger, Private Selection **Products:** Milk, ice cream, novelties, cultured, cheese **Plants (18):** Centennial Farms Dairy, Atlanta; Compton Creamery, Compton, Calif.; Crossroad Farms Dairy, Indianapolis; Heritage Farms Dairy, Marfreesboro, Tenn.; Jackson Dairy, Hutchinson, Kan.; Jackson Ice Cream, Denver; Layton Dairy, Layton, Utah; Michigan Dairy, Livonia, Mich.; Riverside Creamery, Riverside, Calif.; Southern Ice Cream Specialties, Marietta, Ga.; Springdale Ice Cream, Cincinnati, Ohio; Swan Island Dairy, Portland, Ore.; Tamarack Farms Dairy, Newark, Ohio; Tolleson Dairy, Tolleson, Ariz.; Turkey Hill Dairy, Conestoga, Pa.; Vandervoort Dairy, Fort Worth, Texas; Westover Dairy, Lynchburg, Va.; Winchester Dairy Farms, Winchester, Ky.

Kroger – Plants in the Mideast Marketing Area

Crossroad Farms Dairy, Indianapolis;
Michigan Dairy, Livonia, Mich.;
Springdale Ice Cream, Cincinnati, Ohio;
Tamarack Farms Dairy, Newark, Ohio;
Winchester Dairy Farms, Winchester, Ky.

9.	Leprino Foods Co.	Denver, CO	James Leprino, Chairman	Pt		10/30/03	1,750*	1,500*
----	-------------------	------------	-------------------------	----	--	----------	--------	--------

Brands: Proprietary Brand **Products:** Mozzarella, provolone, pizza cheese, cheese blends, whey protein concentrate, whey and lactose. **Plants (9):** Lemore East, Lemore West & Tracy, Calif.; H. Morgan, Colo.; Allendale & Remus, Mich.; Ravenna, Neb. (whey only); Roswell, N.M.; Waverly, N.Y. Norfolk, Neb. plant closed 2003.

Leprino – Mideast pool manufacturing plants:

Allendale & Remus, Mich

	COMPANY	LOCATION	DAIRY EXECUTIVE	TYPE	PARENT CO./SUBSIDIARIES	FY END	SALES '03	SALES '02
11.	Dairy Farmers of America	Kansas City, MO	Gary Hanman, Pres./CEO	C	Fluid joint ventures not included in sales figures	12/31/03	1,392	1,585

DFA – Mideast pool manufacturing plants

Indiana: Goshen (balancing facility, butter, cream, condensed products);
Pennsylvania: New Wilmington (Italian cheeses, whey);

15.	Foremost Farms USA Cooperative	Baraboo, WI	David Fuhrmann, Pres.	C		12/31/03	1,262	1,167
-----	--------------------------------	-------------	-----------------------	---	--	----------	-------	-------

Foremost Farms USA – Mideast pool plants

Elkhorn, Wisconsin – pool supply plant during some months

	COMPANY	LOCATION	DAIRY EXECUTIVE	TYPE	PARENT CO./SUBSIDIARIES	FY END	SALES '03	SALES '02
17.	Prairie Farms Dairy Inc.	Carlinville, IL	Roger Capps, CEO	C	Several joint ventures, not included in sales figures	9/30/03	1,058	1,058

Prairie Farms – Plants in the Mideast Marketing Area

Indiana: Anderson (milk), Fort Wayne (milk, cultured), Holland (milk), Lafayette (novelties);
Michigan: Battle Creek (milk);

28.	Parmalat USA	Wallington, NJ	Michael Rosicki, Pres./CEO	S	P. Parmalat S.p.A. (Italy)	12/31/03	610	608
-----	--------------	----------------	----------------------------	---	----------------------------	----------	-----	-----

Parmalat – Plants in the Mideast Marketing Area

Grand Rapids, Mich. (UHT milk);

60.	Upstate Farms Cooperative Inc.	Buffalo, NY	Bob Hall, CEO	C	S-O-Ai-Ka Milk Products (sales not included) See below No. 63	6/30/03	190	185
-----	--------------------------------	-------------	---------------	---	--	---------	-----	-----

Upstate Farms – Mideast pool plants

Buffalo, N.Y.

63.	United Dairy Inc.	Martins Ferry, OH	Joseph L. Carson, President	Pr		12/31/03	172	109
-----	-------------------	-------------------	-----------------------------	----	--	----------	-----	-----

Brands: United Quality Cheked, United Valley Bell Like Products: Milk, cultured, ice cream, novelties Plants (3): Martins Ferry, Ohio; Charleston, W. Va.; Uniontown, Pa. (all products)

United Dairy – Mideast plants

Plants (3): Martins Ferry, Ohio; Charleston, W. Va.; Uniontown, Pa. (all products)

71.	Michigan Milk Producers Assn.	Hosht, MI	John Dillard, Gen. Mgr.	C		9/30/03	137	154
-----	-------------------------------	-----------	-------------------------	---	--	---------	-----	-----

Brands: None Products: Milk, cream, butter, powder, condensed milk Plants (2): Constantine & Ovid, Mich. (all products at both locations)

MMPA – Mideast pool manufacturing plants

Plants (2): Constantine & Ovid, Mich. (Milk, cream, butter, powder, condensed milk, all products at both locations)

86.	Bareman Dairy Inc.	Holland, MI	Stan Bareman, President	Pr		9/30/03	97	94
-----	--------------------	-------------	-------------------------	----	--	---------	----	----

Products: Milk, ice cream, novelties, cultured, juices, drinks Plants (1): Holland

Bareman Dairy – Mideast plants

Plants (1): Holland (Milk, ice cream, novelties, cultured, juices, drinks)

87.	United Dairy Farmers Inc.	Cincinnati, OH	A. Bradford Lindner, CEO	Pr		12/31/03	93	91
-----	---------------------------	----------------	--------------------------	----	--	----------	----	----

Brands: United Dairy Farmers, Home Made Brand, Krazy Kreems, Muro Shake Products: Milk, ice cream, novelties, cultured Plants (1): Cincinnati

United Dairy Farmers – Mideast plants

Plants (1): Cincinnati (Milk, ice cream, novelties, cultured)

	COMPANY	LOCATION	DAIRY EXECUTIVE	TYPE	PARENT CO/SUBSIDIARIES	FY END	SALES '03	SALES '02
88.	Schneider's Dairy	Pittsburgh, PA	William Schneider, pres.	Pr		3/31/03	92	90

Brands: Schneider Valley Farm, Mong Products: Milk, cheese, drinks, ice cream mix

Schneider's Dairy – Mideast plants

Pittsburgh (Milk, cheese, drinks, ice cream mix)

USDA DAIRY PROGRAMS Mideast Market Administrator – Pool Plants May 04

State Plant City

Indiana

- 1.Dairy Farmers of America Goshen
- 2.Dean Foods Rochester
- 3.Eastside Jersey Anderson
- 4.The Kroger Company Indianapolis
- 5.Pleasant View Dairy Highland
- 6.Prairie Farms Dairy Fort Wayne
- 7.Schenkels All Star Dairy Huntington
- 8.Smith Dairy Wayne Division Richmond

Kentucky

- 9.Louis Trauth Dairy Newport

Maryland

- 10.Potomac Farms Dairy Cumberland

Michigan

- 11.Baremans Dairy Holland
- 12.C.F. Burger Detroit
- 13.Country Fresh Flint
- 14.Country Fresh Grand Rapids
- 15.Country Fresh Livonia
- 16.Guernsey Farms Dairy Northville
- 17.Inverness Dairy Cheboygan
- 18.Jilberts Dairy Marquette
- 19 .Leprino Foods Allendale
20. Leprino Foods Remus
- 21.Liberty Dairy Evert
- 22.Michigan Dairy Livonia
- 23.Michigan Milk Producers Assoc. Constantine
- 24.Michigan Milk Producers Assoc. Ovid
- 25.Parmalat Grand Rapids Wyoming
- 26.Prairie Farms Dairy Galesburg
- 27.Quality Dairy Lansing

New York

- 28.Upstate Farms Buffalo

Ohio

- 29.Arps Dairy Defiance
- 30.Broughton Foods Company Marietta
- 31.Consun Foods Elyria
- 32.H. Meyer Dairy Cincinnati
- 33.Oberlin Farms Dairy Cleveland
- 34.Reiter Dairy Akron
- 35.Reiter Dairy Springfield
- 36.Smith Dairy Orrville
- 37.Sterling Stores Wauseon
- 38.Superior Dairy Canton
- 39.Tamarack Farms Newark
- 40.Toft Dairy Sandusky
- 41.United Dairy Martins Ferry
- 42.United Dairy Farmers Cincinnati

Pennsylvania

- 43.Carl Colteryahn Dairy Pittsburgh
- 44.Dairy Farmers of America New Wilmington
- 45.Dean Dairy Products Company Sharpsville
- 46.Gallikers Dairy Company Johnstown
- 47.Marburger Farm Dairy Evans City
- 48.Meadow Brook Dairy Erie
- 49.Schneider's Dairy Pittsburgh
- 50.Turners Dairy Farms Pittsburgh
- 51.United Dairy Uniontown

West Virginia

- 52.United Dairy Charleston

Plants marked in red are normally pooled, but were not pooled for economic reasons in May

ATTACHMENT 3

THE LARGEST MILK COOPERATIVES WITH SALES IN THE FEDERAL MIDEAST MILK MARKETING ORDER

WEBSITE INFORMATION ON PRODUCTION, MARKETS, LOCATION AND MEMBERS

1. The Top 50 dairy cooperatives 2003, by Hoard's Dairymen (Summer 2004), republished by Family Dairies USA;
2. Foremost Farms USA membership, production, locations and milkshed (excerpts from 2003 annual report).
3. Michigan Milk Producers Association membership, production and milkshed.
4. Dairy Farmers of America, membership, production, markets and major customers, national milkshed; Mideast Region membership, production, and major customers.



3225 East Washington Ave.
Madison, WI 53704-4391
Phone: 608-244-3373 Fax: 608-244-3643

Family Dairies USA

Top 50 co-ops handle 137 billion pounds of milk

We've moved up to number 5!

by Annie Whitehill

The Nations top 50 cooperatives marketed 137.286 billion pounds of milk last year which was up 1 percent from 2002. Nearly 81 percent of the 170.3 billion pounds produced in 2003.

For the first time in five years a new name appeared in the top five. Family Dairies USA edged out Dairyalea for No. 5. Family Dairies produced 178 million pounds more than in 2002 for a total of 5.638 billion pounds. Dairyalea held steady at 5.5 billion pounds. Making the biggest leap is Lone Star Milk which jumped five places to No. 20 with 1.420 billion pounds.

Farmer's Cooperative Creamery, which recently acquired Portland Independent Milk Producers, moved from 34 to 30.

Dairy Farmers of America handled over twice as much milk as California Dairies, No. 2. With 13,445 farms shipping 34.8 billion pounds, DFA produced 21 percent of the nation's milk. While DFA continues to increase pounds of milk handled, which is partly due to their members produced an average of 212,564 pounds more than last year, the total number of member farms decreased to 13,455. DFA handled another 20.7 billion pounds of nonmember milk.

Members of the top three co-ops, DFA, California Dairies, and Land O'Lakes, collectively produced more than 62.5 billion pounds, or 35 percent of the nation's milk.

A New Mexico cooperative, Continental Milk, handled the most milk per farm . . . 55.9 million pounds. Second was Selma, also from New Mexico, with 43.2 million pounds per farm.

The only new addition is Calhoun Cooperative Creamery Co. which edged out Country Classic Dairies, Inc., Bozeman, MT, to No. 50.

Information for our Top 50 Co-ops List is provided to Hoard's Dairyman during the summer. Each cooperative is contacted to provide the previous year's information. (Since some co-ops end their fiscal year on a date other than December 31, milk member farms may not necessarily represent the 2003 calendar year.)

[Coops marketing to the Mideast Marketing Order highlighted in yellow.]

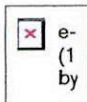
Rank		Dairy cooperative	Member milk volume (bil. lbs.)	Member farms	Rank		Dairy cooperative	Member milk volume (bil. lbs.)
1	<input type="checkbox"/>	Dairy Farmers of America Kansas City, MO.	35.800	13,455	26	<input type="checkbox"/>	Continental Dairy Products, Inc. Artesia, NM.	1.007
2	<input type="checkbox"/>	California Dairies, Inc. Los Banos, CA.	14.529	662	27	<input type="checkbox"/>	Upstate Farms Cooperative Inc Buffalo, NY.	0.974
3	<input type="checkbox"/>	Land O'Lakes, Inc. St. Paul, MN.	12.184	3,889	28	<input type="checkbox"/>	Bongards Creameries Bongards, MN.	0.894
4	<input type="checkbox"/>	Northwest Dairy Association Seattle, WA.	6.729	691	29	<input type="checkbox"/>	Magic Valley Quality Milk Producers Jerome, ID.	0.671

5	<input type="checkbox"/>	Family Dairies USA Madison, WI	5.658	4,078	30	<input type="checkbox"/>	Farmers Cooperative Creamery McMinnville, OR.	0.662
6	<input type="checkbox"/>	Dairylea Cooperative, Inc. East Syracuse, NY.	5.500	2,467	31	<input type="checkbox"/>	Tillamook County Creamery Association Tillamook, OR.	0.571
7	<input type="checkbox"/>	Associated Milk Producers, Inc. New Ulm, MN.	5.300	4,300	32	<input type="checkbox"/>	Mount Joy Farmers Cooperative, Inc. Mount Joy, PA.	0.534
8	<input type="checkbox"/>	Foremost Farms USA Baraboo, WI.	4.897	3,383	33	<input type="checkbox"/>	Central Valley Dairmen Cooperative, Inc. Modesto, CA.	0.534
9	<input type="checkbox"/>	Manitowoc Milk Producers Cooperative Manitowoc, WI.	4.298	2,861	34	<input type="checkbox"/>	Ellsworth Cooperative Creamery Ellsworth, WI.	0.511
10	<input type="checkbox"/>	Select Milk Producers, Inc. Artesia, NM.	3.327	77	35	<input type="checkbox"/>	Niagara Milk Cooperative, Inc. Niagara Falls, NY.	0.470
11	<input type="checkbox"/>	Michigan Milk Producers Association Novi, MI.	3.240	1,769	36	<input type="checkbox"/>	Plainview Milk Products Cooperative Plainview, MN.	0.462
12	<input type="checkbox"/>	Maryland & Virginia Milk Producers Co-op Reston, VA.	2.902	1,470	37	<input type="checkbox"/>	Conesus Milk Producers Cooperative, Inc. Perry, NY.	0.424
13	<input type="checkbox"/>	Southwest Milk, Inc. Bellevue, FL.	2.861	307	38	<input type="checkbox"/>	Zia Milk Producers, Inc. Roswell, NM.	0.387
14	<input type="checkbox"/>	United Dairymen of Arizona Tempe, AZ.	2.655	102	39	<input type="checkbox"/>	Cal-West Dairymen, Inc. Walnut Creek, CA.	0.380
15	<input type="checkbox"/>	Agri-Mark, Inc. Lawrence, MA.	2.384	1,363	40	<input type="checkbox"/>	Cass-Clay Creamery, Inc. Fargo, ND.	0.344
16	<input type="checkbox"/>	Swiss Valley Farms Company Davenport, IA.	1.684	1,013	41	<input type="checkbox"/>	Lowville Producers Dairy Cooperative, Inc. Lowville, NY.	0.268
17	<input type="checkbox"/>	Allied Federated Cooperatives Canton, NY.	1.593	1,772	42	<input type="checkbox"/>	Burnett Dairy Cooperative Grantsburg, WI.	0.244
18	<input type="checkbox"/>	First District Association Litchfield, MN.	1.583	1,410	43	<input type="checkbox"/>	Humboldt Cooperative Creamery Association Fortuna, CA.	0.240
19	<input type="checkbox"/>	Alto Dairy Cooperative Waupun, WI.	1.528	620	44	<input type="checkbox"/>	Arkansas Dairy Co-op Assn. Damascus AK.	0.210
20	<input type="checkbox"/>	Lone Star Milk Producers Windthorst, TX.	1.420	205	45	<input type="checkbox"/>	Sunrise Ag Cooperative Buckman MN.	0.203
21	<input type="checkbox"/>	Milwaukee Cooperative Milk Producers Milwaukee, WI.	1.369	776	46	<input type="checkbox"/>	Midwest Dairymen's Company Rockford, IL.	0.188
22	<input type="checkbox"/>	Prairie Farms Dairy, Inc. Carlinville, IL.	1.332	843	47	<input type="checkbox"/>	Cooperative Milk Producers Association, Inc. Blackstone, VA	0.180
23	<input type="checkbox"/>	Security Milk Producers Association Ontario, CA.	1.250	34	48	<input type="checkbox"/>	Southeastern Graded Milk Producers Assn. Somerset, KY.	0.174
24	<input type="checkbox"/>	St. Albans Cooperative Creamery, Inc. St. Albans, VT.	1.197	532	49	<input type="checkbox"/>	Hastings Cooperative Creamery Association Hastings, MN.	0.162
25	<input type="checkbox"/>	Woodstock Progressive Milk Producers Assn. Woodstock, IL.	1.197	500	50	<input type="checkbox"/>	Calhoun Cooperative Creamery Co. Lansing, IA	0.150
<input type="checkbox"/> Member of National Milk Producers Federation							TOTAL	137.2

☐ Member of National Milk Producers Federation

* Tie

[Return Home](#) [About Us](#) [Calendar](#) [Member Benefits](#) [Newsletter](#) [Personnel](#) [Legislation](#) [Links](#)



[General E-mail](#) [Webmaster E-mail](#)

Copyright © 2002, Family Dairies USA

[Website Designed and Maintained By PCM Leasing, Inc.](#)

Aerial Photos by Franklin Cook, E 12820 State Road 33, Baraboo, WI 53913-9604 Phone: 608-356-3483



REPOSITIONING FOR
GROWTH

FOREMOST FARMS USA 2003 ANNUAL REPORT



HIGHLIGHTS

2003 ANNUAL REPORT

Statistical

For the years ended December 31,

	2003	2002
Producer milk received (pounds)	4,896,658,000	5,033,280,000
Average number of farms	3,383	3,766
Average milk per farm (pounds)	1,447,400	1,336,500
Average value of milk per farm	\$182,676	\$159,603
Products manufactured:		
Cheese (pounds)	475,113,000	495,946,000
Butter (pounds)	21,313,000	25,418,000
Packaged fluid milk (gallons)	68,369,000	72,740,000
Cultured products (pounds)	62,394,000	61,977,000
Packaged juices (gallons)	23,923,000	26,359,000
Whey products (pounds)	294,220,000	296,302,000

Financial

For the years ended December 31,

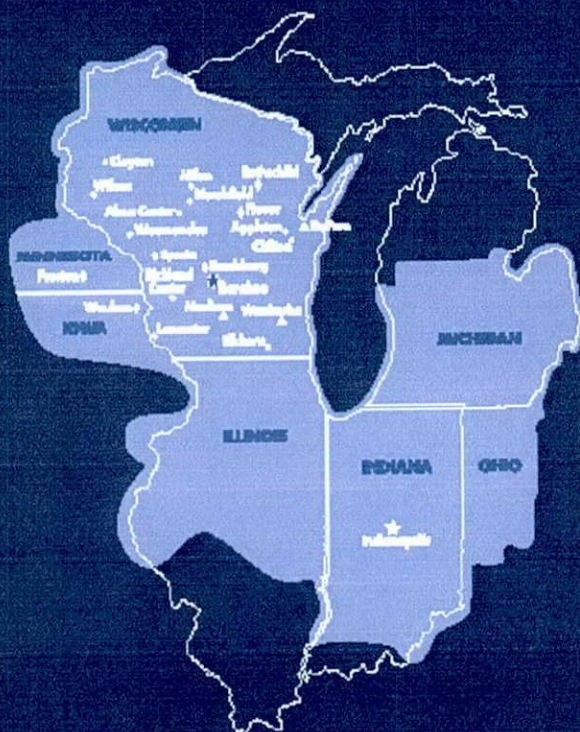
	2003	2002
Total revenues	\$1,202,275,000	\$1,167,398,000
Net income	\$7,570,000	\$2,162,000
Income allocated	\$7,384,000	-
Cash returned to members	\$2,485,000	\$726,000

At December 31,

	2003	2002
Current assets	\$140,401,000	\$132,421,000
Working capital	\$51,646,000	\$36,733,000
Current ratio	1.58 to 1.00	1.38 to 1.00
Total assets	\$332,678,000	\$341,991,000
Long-term obligations	\$63,812,000	\$75,150,000
Total members' & patrons' equities	\$163,497,000	\$158,679,000

ON THE COVER Over 68 million gallons of fluid milk products were produced at our Du Pera and Wausau, Wisconsin, plants in 2003. Mike Gestro, a production associate at Foremost Farms' Du Pera plant, makes sure that these products match our customers' expectations for quality and wholesomeness.

LOCATIONS & PRODUCTS



- LOCATIONS**
- Cheese Plants
 - ♦ Ingredient Plants
 - ▲ Field Production Plants
 - Corporate Headquarters
 - ★ Offices
 - Transfer Stations

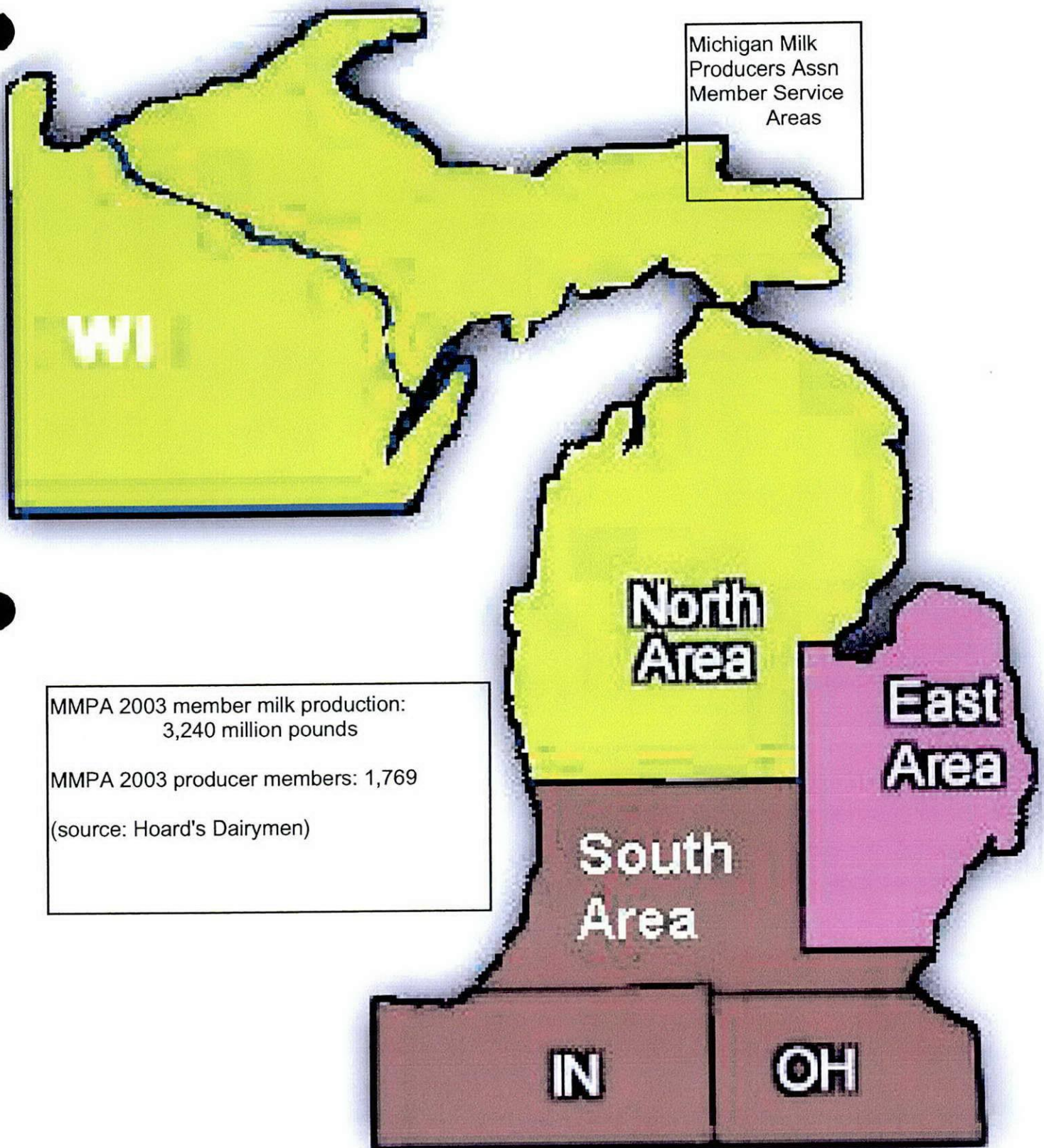
1,509 employees are committed to consistently producing superior dairy products while maximizing returns for our member-owners.

During 2003, the 3,700 member-owners of Foremost Farms USA supplied 4.9 billion pounds of milk to their cooperative.

Location Telephone Directory

Alma Center, Wisconsin	(715) 964-7411	Milan, Wisconsin	(715) 257-7015
Appleton, Wisconsin	(920) 734-1461	Plover, Wisconsin	(715) 341-0101
Baraboo, Wisconsin	(608) 355-8700	Preston, Minnesota	(507) 765-3831
Chilton, Wisconsin	(920) 849-9339	Reedsburg, Wisconsin	(608) 524-2351
Clayton, Wisconsin	(715) 948-2166	Richland Center, Wisconsin	(608) 647-2186
De Pere, Wisconsin	(920) 336-4206	Rothschild, Wisconsin	(715) 359-0534
Elkhorn, Wisconsin	(262) 723-8870	Spartan, Wisconsin	(608) 269-3126
Indianapolis, Indiana	(317) 842-7755	Waunakee, Wisconsin	(262) 312-5000
Lancaster, Wisconsin	(608) 723-7681	Waukon, Iowa	(563) 568-3474
Madison, Wisconsin	(608) 271-3000	Waumandee, Wisconsin	(608) 626-2121
Marshfield, Wisconsin	(715) 384-5616	Wilson, Wisconsin	(715) 772-4211

Equal Opportunity Employer




[MyDFA](#)
[Who We Are](#)
[Members](#)
[Newsroom](#)
[Partners](#)
[Farm & Family](#)
[DFA Mart](#)
[Join DFA](#)


Who We Are

[Co-op](#)
[Milkshed](#)
[Plants](#)
[Products](#)
[Brands](#)
[Biographies](#)

Our Actions Have Caused Quite A Reaction

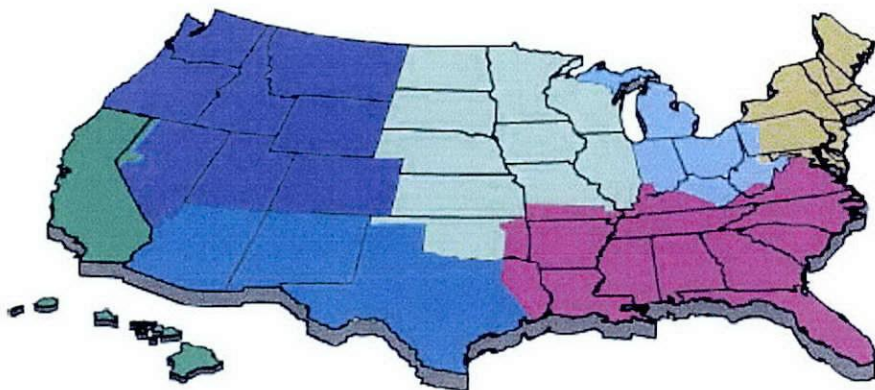


Dairy Farmers of America is all about milk and the 22,924 dairy farm families who produce it. **We are** proud to be a cooperative, owned and operated by the dairy farmers whom we serve. **We are** one of the country's most diversified U.S. manufacturer of dairy products, food components and ingredients. **We are** a leader in formulating and packaging shelf-stable dairy products in can and glass.

[Learn more about DFA's History](#)
[Get the facts on DFA](#)


We are one of the most vertically-integrated and future-focused co-op and food companies in the industry. **We are** an organization with over 3,500 employees.

We are DFA—the premium provider of market opportunities for farmers and a value-added supplier of innovative dairy products and food components for customers around the world.



Click on an Area for a brief overview.

[Talk to Us](#) | [Privacy Policy](#) | [Site Map](#) | [What's New](#)

powered by [FreeFind](#)


[MyDFA](#)
[Who We Are](#)
[Members](#)
[Newsroom](#)
[Partners](#)
[Farm & Family](#)
[DFA Mart](#)
[Join DFA](#)

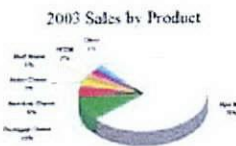

Who We Are

[Co-op](#) | [Milkshed](#) | [Plants](#) | [Products](#) | [Brands](#) | [Biographies](#)

The State of the Milkshed

[DFA](#) markets and processes milk and dairy products on behalf of its member-owners across the United States. DFA's member-owners marketed 56.5 billion pounds of milk (33 percent of the U.S. milk supply) in the year 2003.

DFA membership and milkshed is divided into seven geographic marketing areas. These areas are structured for grassroots representation of farmers and their local markets. [DFA's footprint](#) extends into every state and moves into many international markets. Market [opportunities](#) for member milk include DFA's own family of value-added manufacturing plants along with DFA's expanded joint venture network of the some of the nation's most well-respected regional and national fluid milk bottlers and dairy product manufacturers.


[DFA's structure](#)

[Milk Marketings](#)

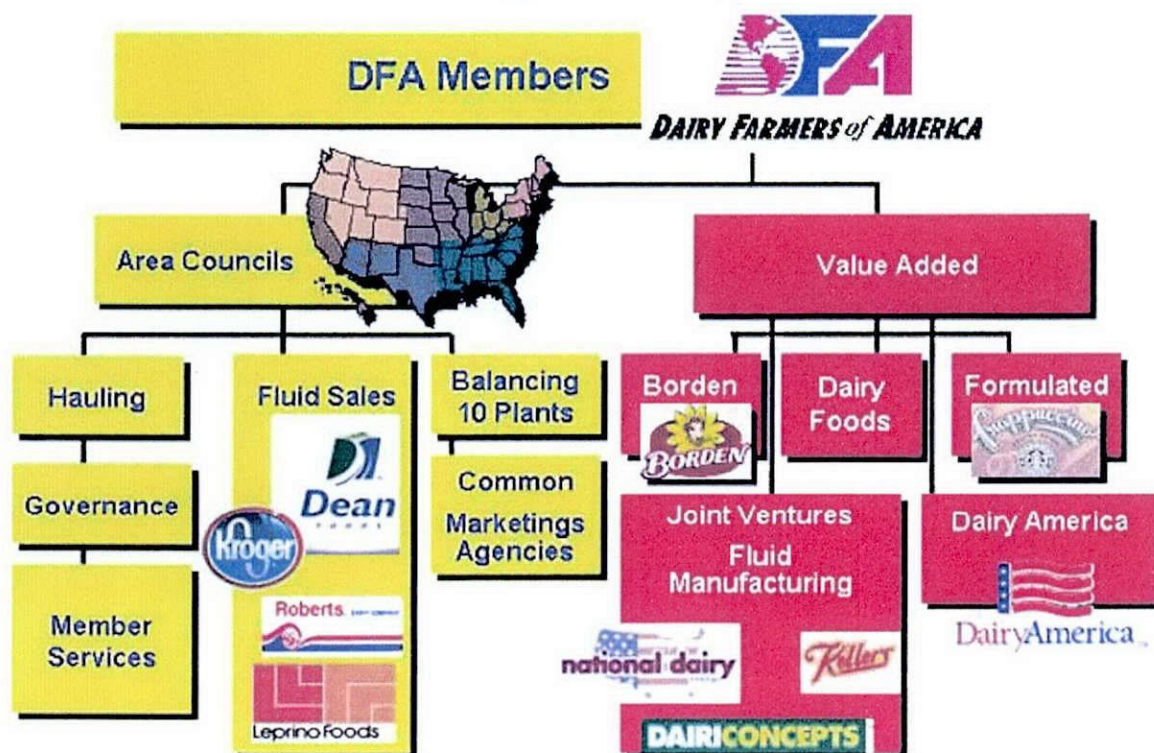
[DFA's footprint](#)

Click on an image for a bigger view

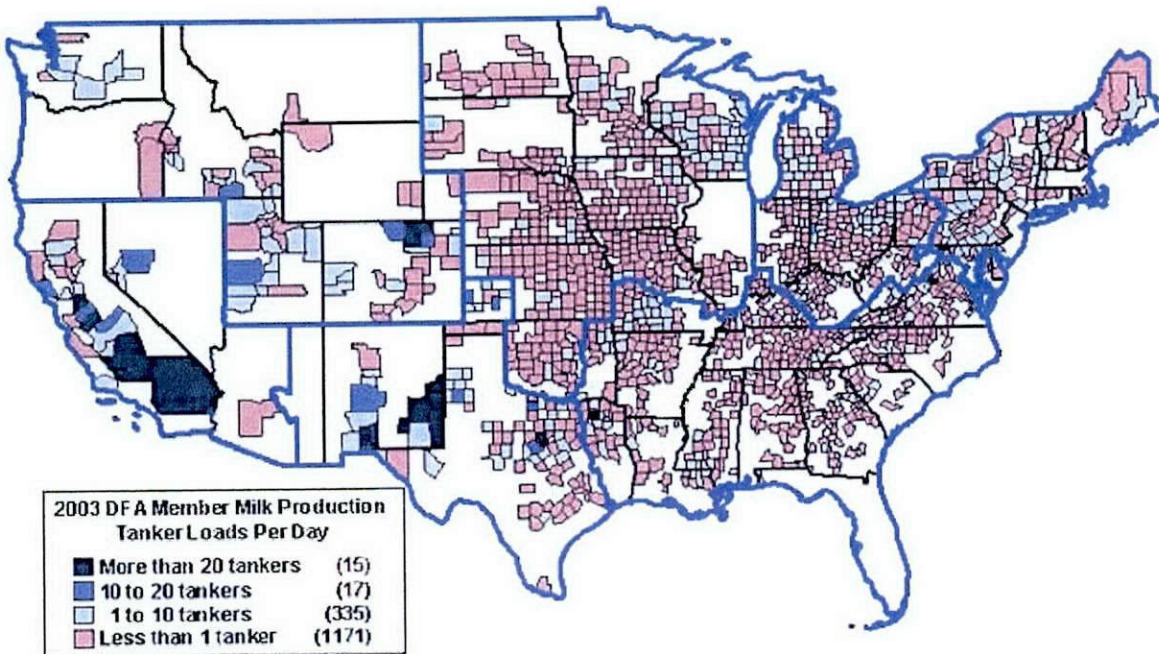
[Talk to Us](#) | [Privacy Policy](#) | [Site Map](#) | [What's New](#)

powered by [FreeFind](#)

Operating Structure



2003 DFA Member Production



Facts About DFA Mideast Area



*Fulfilling the promise in every
drop of milk.*

*Bringing fresh dairy quality to
America's dinner table.*

*Growing new markets for
America's dairy industry.*

*Putting muscle in milk
marketing programs.*

Who Is Dairy Farmers of America?

Dairy Farmers of America (DFA) is proud to be owned and operated by the 22,924 dairy farmers whom it serves. In 2003 DFA marketed and processed 56.5 billion pounds of milk and dairy products - 33 percent of the U.S. milk supply - on behalf of its member owners.

DFA provides its dairy-farmer members cost effective marketing and movement of milk, global market opportunities, access to branded and value-added markets, expanded product manufacturing capabilities, cost efficient services and programs and long-term value.

DFA's structure maintains seven geographic marketing and membership areas designed to enhance the grassroots representation of dairy farmers in their cooperative.

Mideast Area

3737 Embassy Parkway, Suite 300
Fairlawn, OH 44333
Phone: 330-670-7800
FAX: 330-670-7801

About the Mideast Area

The Mideast Area of Dairy Farmers of America, Inc. (DFA) serves a milkshed extending into 6 states. DFA's Mideast Area represents 2,633 member farms that market more than 4.2 billion pounds of milk cooperatively. Average production per member farm is 1.63 million pounds of milk per year.



Jim Carroll
Chief Operating Officer



DAIRY FARMERS of AMERICA

To learn more about DFA, contact us at 888-DFA-MILK (888-332-6455), or visit our Web site at www.dfamilk.com.



Tom Croner
Area Council Chair

Mideast Area Council Governance Structure

The Mideast Area Council is divided into 25 districts. The members in each district select one representative each to serve on the Mideast Area Council and the Mideast Area resolutions committee. The Area Council monitors the marketing of member milk and provides advice to the Corporate Board of Directors in matters pertaining to the Area. From these 25 council representatives, eight members are elected to serve on the DFA Board of Directors. The 25 elected Area resolutions committee members help determine policy guidelines for the Board and select 8 members to serve on DFA's corporate resolution's committee. Members also chose Delegates to represent them when a member vote is necessary. The Mideast Area sends one delegate for each fifty farms to vote on necessary matters at the DFA Annual Meeting.

About Our Milkshed

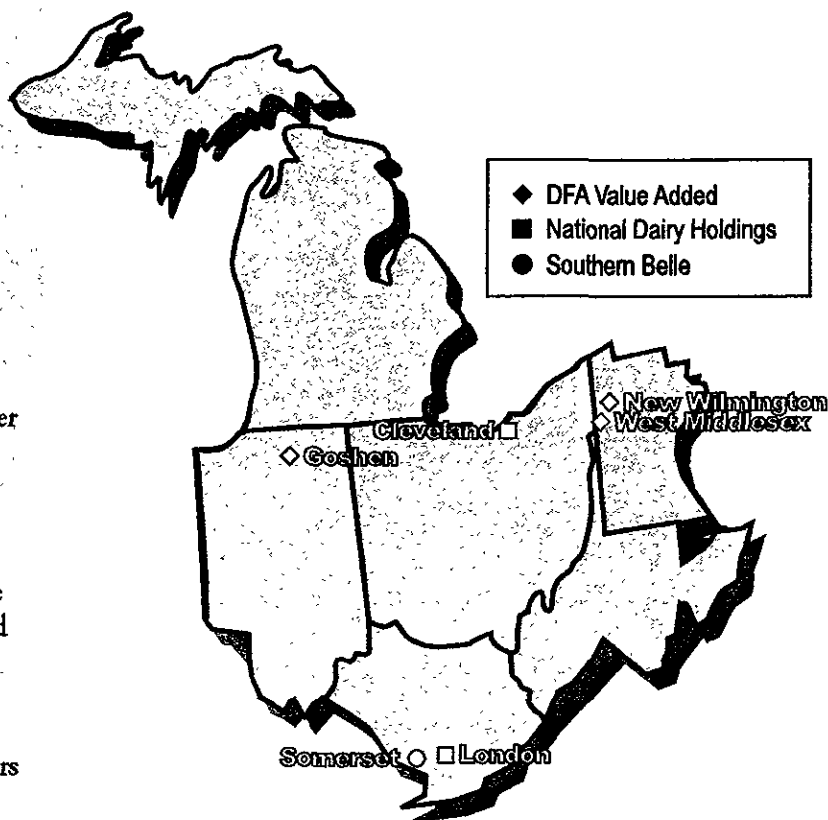
Member Farms
2,633

Annual Milk Production
4.2 Billion Lbs.

Average Production
Per Member
1.63 Million Lbs.

Services and Programs

Professional On-Farm Field Service • Quality Assurance (Free Dump) Program • Milk Income Loss (due to fire, wind or lightning) • Quality Pricing Program • Volume Pricing Program • Seasonal Production Bonus Program • Bulk Tank/Driveway/Generator Loan Program • Specialized Programs through Eastern Laboratory Services, Ltd. • Custom Lab Services • Individual Cow, Herd Health, Bulk Tank Monitoring • Forward Contracting • Milk Quality Testing • Component Testing • Young Cooperator Program & Area Scholarships



Joint Ventures

National Dairy Holdings
Southern Belle

DFA Manufacturing Facilities

Goshen, Ind.
New Wilmington, Pa.
West Middlesex, Pa.

Ten Largest Customers

1. Suiza Foods
2. Kroger Company
3. National Dairy Holdings
4. Dannon
5. Bareman's Dairy
6. Holmes Cheese
7. Kraft Foods
8. United Dairy
9. Smith Dairy
10. United Dairy Farmers

ATTACHMENT 4

Mideast Milk Marketing Area*
Producer Milk from the Upper Midwest and New York/NJ/NE
1980, 1987, 1998, 2001, and 2004

--- million pounds during the year ---

	1980	1987	1998	2001	2004
Upper Mid-W	546	203	124	4,428	2,725
NY, New Eng., And N.Jersey	152	157	364	943	1,219

* Source: USDA, Producer Milk Marketed under Federal Milk Orders by State of Origin, periodic publication in Federal Milk Order Market Statistics and by separate publications, 1990-2004, for Mideast and five predecessor milk orders; Exhibit 7, Request 1a.

Yale Law Office, LP

ATTORNEYS AT LAW

ATTACHMENT
5

Benjamin F.
Yale*
Kristine H. Reed³

527 North Westminster Street
P.O. Box 100
Waynesfield, Ohio 45896-0100
(419) 568-5751
Fax: (419) 568-6413
Website: www.yalelawoffice.com

*also admitted in New Mexico and Texas

³also admitted in Indiana

*also admitted in Michigan

January 7, 2004

Ms. Dana Coale
Deputy Administrator, Dairy Programs
1400 Independence Avenue, SW
Room 2968
South Building
Stop 0225
Washington DC 20250-0225

VIA FAX 202-690-3410

Re: Proposals for the Mideast Milk Marketing Area

Dear Ms. Coale

Earlier today I faxed a letter requesting three proposals be included in the notice of hearing for modifications to Order 1033. I described them in general terms. The lack of more detail was due to the fact that this office and its staff was still recovering from a severe ice storm which passed through this region on Wednesday night and Thursday morning. The storm brought ice and took power, phone, heat and internet.

Despite the fact that full power, but no internet, was brought on this evening, I was able to partially reopen the office with half staff late Friday morning. Meeting not only the work of the day before but the added burden of dealing with the reduced services and employee needs for heat and food there simply was no ability to provide a fuller request by close of business Friday. Besides much of my research material for this project was on the internet and that was unavailable to me. I instead summarized our three proposals in language which the administrator has accepted in other hearings. I requested time to supplement the proposals with more detail. I was not asking for an extension. The hope was that consideration for the historic weather event could be considered.

At about 4:25 pm I was informed that the informal request was insufficient and something more detailed needed faxed by midnight to night or the proposal would not be considered. Further there would be no



time granted to expand the proposal. Although disappointed with the response I certainly appreciate the effort made to inform me early enough to correct the situation. Thus this proposal is being faxed after hours to meet that request.

Please accept the following as proposals by Continental Dairy Products, Inc., a cooperative with farms in the Mideast Marketing Area for inclusion in the Notice of Hearing. The language struck has a ~~strikeout~~ and language that is added is in ALL CAPS with true capitals UNDERLINED.

Proposal (1) Amend 7 C.F.R. §1033.13 as follows:

Modify the opening paragraph of 1033.13 to read:

EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

Add subsection (e) to read:

(E) PRODUCER MILK SHALL NOT INCLUDE ANY MILK WHICH COMES FROM A DAIRY FARM WHOSE MILK WAS NOT PRODUCER MILK UNDER THE PROVISIONS OF THIS PART DURING THE PREVIOUS TWELVE (12) MONTHS OR .13 OF ANY OTHER ORDER IN PARTS 1001-1135. THIS EXCEPTION SHALL NOT APPLY IF

(I) MILK WAS NOT MARKETED FROM THAT FARM DURING THE PREVIOUS TWELVE (12) MONTHS IN WHICH CASE ALL MILK THAT IT DID MARKET FOR WHAT EVER PART OF THE PRECEEDING TWELVE (12) MONTHS MUST HAVE BEEN PRODUCER MILK.

(II) MILK WAS NOT MARKETED FROM THAT FARM BECAUSE THE GRADE A MILK PRODUCERS PERMIT WAS SUSPENDED DURING THE SOME OF THE PERIOD AND THE PRODUCER DID NOT MARKET MILK UNDER ANY OTHER GRADE OF MILK PERMIT.

(III) MILK FROM THE FARM HAS NOT BEEN PRODUCER MILK FOR AT LEAST TWELVE CONSECUTIVE MONTHS.

The rationale for this proposal lies in the ability of plants who do not service the Class I market to share at their wish. When it results in a positive PPD they pool, when it does not they depool. This month to month variation in the amount of milk pooled makes predicting the PPD impossible and negates any ability of producers to manage risk. The proposal would require that a decision to depool milk be effective for twelve months. Further the emphasis is on the producer rather than volume of milk to automatically account for season variation in production and any increase in milk production.

(2) Amend 7 C.F.R. §1033.75 as follows:

§1033.75 Plant location adjustments for producer milk and nonpool milk.

(A) For purposes of making payments for producer milk and nonpool milk FOR MILK DELIVERED TO A DISTRIBUTING PLANT UNDER 1033.7(A) OR A PLANT LOCATED IN THE MARKETING AREA, a plant location adjustment shall be determined by subtracting the Class I price specified in §1033.51 from the Class I price at the plant's location. The difference, plus or minus as the

case may be, shall be used to adjust the payments required pursuant to §§1033.73 and 1000.76.

(B) FOR PURPOSES OF MAKING PAYMENTS FOR PRODUCER MILK AND NONPOOL MILK FOR MILK NOT PRICED IN SUBSECTION (A) OF THIS SECTION, A PLANT LOCATION ADJUSTMENT SHALL BE DETERMINED AS FOLLOWS:

(1) TAKE THE SHORTEST DISTANCE OVER HARD SURFACE HIGHWAY FROM THE PLANT OF FIRST RECEIPT TO THE NEAREST PLANT DESCRIBED IN 1033.7(A) WHICH IS ASSOCIATED WITH THE MILK AS DETERMINED BY THE MARKET ADMINISTRATOR

(2) SUBTRACT ANY MILEAGE THAT OCCURS IN THE AREA DESCRIBED IN 1033.2

(3) MULTIPLY THE RESULT BY \$0.0035.

(4) SUBTRACT THE PRODUCT FROM THE CLASS I PRICE SPECIFIED IN §1033.51 FOR THE ASSOCIATED PLANT. THE DIFFERENCE, PLUS OR MINUS AS THE CASE MAY BE, SHALL BE USED TO ADJUST THE PAYMENTS REQUIRED PURSUANT TO §§1033.73 AND 1000.76.

The rationale for this proposal lies in the concept that under current pricing systems, milk delivered to plants out of the marketing area is valued higher than milk delivered to the Class I market. For example the value of milk at a farm in Hardin County Ohio which is delivered to a bottling plant in Clark County, Ohio is the price at Clark County *less the cost to move it to market*. The blend price is supposed to create an incentive to move that milk. Similarly, milk that is at a reserve plant or supply plant is worth to the bottling plant the value of milk at the bottling plant *less the cost to move it to market*. The flat pricing now prevalent in the pricing surface is insufficient to move that milk. However, milk that shares in the marketwide pool but is not delivered to the Class I market, or even expected to be delivered, receives the value of the milk at the plant received with no reduction for the cost to move it to the class I market. In short, the milk delivered to the market is subsidizing milk not delivered to the market.

This regulatory bonanza for the non-delivered milk is attractive to other producers. The result has been increased amounts of milk pooled that would ordinarily not be. All of the milk added is not Class I and results in a reduced blend price or PPD.

Over the last several years the response has been to decrease the efficiency in moving milk by requiring more expensive movement of milk for the sole purpose of pooling the milk. The result is that those producers who service the market continue to subsidize distant milk not only in decreased pool receipts but in added costs in marketing milk. Any scheme which taxes those who supply the market for the benefit of those who do not violates the AMAA. Continued burdens on producers creates a trading of increased income from the pool with increased costs to meet the burden.

The proposal recognizes the economic reality—milk has a location value relative to the market.

(3) To the extent that in accordance with other proposals, the Secretary agrees to provide for an assembly and transportation credit, that Marketwide Service Payments consistent with provisions found at 7 C.F.R. §§1007.80-82 be adopted.

Continental understands that among the regulatory inefficiencies being created to offset the problems with excess pooling and the flat pricing structure is the creation of assembly and transportation credits. These will pay producers who supply the market some of the cost to move the milk to market. But it is not the

Ms. Dana Coale

January 7, 2004

Page 4

market that will pay this, but the producers. The price for Class I plants should be high enough to attract the supply of milk and the resulting blend price should not be reduced to cover those costs. This proposal simply provides that a transportation charge be added to class I sufficiently high to fund those credits.

If you have any questions feel free to contact me.

Sincerely yours

Benjamin F. Yale

xc: Continental Dairy Products
David Walker

John H. Vetne

Attorney at Law
103 State St. #6
Newburyport, Ma. 01950

Telephone (978) 465-8987
cell (978) 618-8192
jvetne@justice.com

January 28, 2005

Ms. Dana Coale
Deputy Administrator, Dairy Programs
1400 Independence Avenue, SW
Room 2968 South Building Stop 0225
Washington DC 20250-0225
VIA FAX 202-690-3410
Email dana.coale@usda.gov

Re: Proposed Mideast Milk Order Hearing – proposal # 2 by Continental Dairy Products

Dear Ms. Coale:

I write on behalf of Alto Dairy, Inc., White Eagle Cooperative Association, and Erie Cooperative Association (the "Cooperatives"), dairy farm cooperative associations that market their milk under Federal Order 33, the Mideast Milk Marketing Area.

The Cooperatives have received a copy of proposals submitted on January 7 by attorney Ben Yale on behalf of Continental Milk Products, Inc., in response to the Department's Invitation to Submit Additional Proposals ("invitation"). The invitation followed proposals by farm trade associations, Ohio Dairy Producers and Ohio Farmers Union, for rule amendments to restrict depooling in response to volatile cash cheese prices on the Chicago Mercantile Exchange. As in prior hearings in the Upper Midwest and Central Markets, USDA's invitation generated a new round of proposals to further restrict pool access, or create pooling inefficiency for local producers, in addition to proposed for regulatory remedies relating to price volatility and depooling response.

While recent media reports suggest that milk marketing disorder resulting from CME price volatility may have been manipulated by DFA, a principal proponent of new pooling restrictions, if USDA decides that continuation of the hearing process in the Mideast (or other markets) is nevertheless appropriate, the Cooperatives respectfully request the Department to include Continental Dairy's Proposal # 2, and amendments thereto, in the hearing agenda.

Continental Dairy Products' Proposal 2 would provide, on a local market basis, for a partial return to negative location adjustments of the blend (PPD) price Order 33 producer milk delivered or diverted to plants located outside of the marketing area. This, as we understand it, is intended to adjust the producer price under Order 33 at the plant of receipt based on the value of milk by reference to the marketing area with which the milk is associated.

Federal Milk Order reform created a Class I pricing grid for the entire nation, which was quite justified based on the Cornell University model. It also made identical adjustments in producer prices, as had been agency practice for decades, which created producer price distortions at distant locations from each regional market. The latter effect was inconsistent with the Cornell analysis of

the value of producer (as opposed to Class I) milk, and entirely unnecessary. The 1985 Farm Bill, amending 7 U.S.C. §608c5(L), expressly authorized USDA to adjust producer prices in a manner different from Class I prices: "adjustments in payments by handlers under paragraph (A) [i.e., Class I differentials] need not be the same as adjustments to producers under paragraph (B) [i.e., producer blend or PPD prices]."

In our view, Attorney Yale is correct in complaining the pool qualification amendments over the past few years have created local market inefficiency to remedy a problem that is created by pricing:

[T]he [pooling qualification] response has been to decrease the efficiency in moving milk by requiring more expensive movement of milk for the sole purpose of pooling the milk. The result is that those producers who service the market continue to subsidize distant milk not only in decreased pool receipts but in added costs in marketing milk.

Continental Dairy Products, Proposals for the Mideast Marketing Area, 1-7-05, p. 3.

While the Cooperatives do not necessarily support Continental Proposal No. 2 in its current form, we strongly encourage USDA to place on any hearing agenda proposals, such as Continental Proposal No. 2, that would consider a regulatory remedy addressed to the source of the problem -- provisions that create the economic incentive for handler or producer marketing decisions claimed to create marketing disorder.

For the foregoing reasons, and those expressed in Continental Dairy's letter-Proposals for the Mideast Marketing Area, Continental Dairy Products' Proposal No. 2 should be included in a Notice of Hearing, or in an amended Notice of Hearing, for the Mideast Milk Marketing Order, if any Notice is issued.

Respectfully submitted,

John HVetne

Ec: Ben Yale, Esq.
Dave Walker, M.A.

RECEIVED FEB 22 2005



United States
Department of
Agriculture

Agricultural
Marketing
Service

1400 Independence Ave., SW, Stop 0225
Room 2968 - South Building
Washington, DC 20250-0225

FEB 15 2005

Mr. Benjamin F. Yale
Yale Law Office, LP
527 North Westminster Street
Post Office Box 100
Waynesfield, Ohio 45896

Dear Mr. Yale:

Thank you for your proposals of January 7, 2004, submitted on behalf of Continental Dairy Products, Inc., seeking to amend the provisions of the Mideast Federal milk marketing order regarding the location value of producer milk and the establishment of a transportation credit balancing fund. These proposals are not accepted for consideration at this proceeding.

Your proposal to amend the location value of producer milk is being held in abeyance. The Department believes that a system wide discussion would be more appropriate.

At this time, we do not think your proposal to establish a transportation credit balancing fund is appropriate for an order whose Class I needs are more than adequately served. Therefore, we are holding this proposal in abeyance.

We appreciate your interest and participation in the Federal milk order program.

Sincerely,

A handwritten signature in cursive script that reads "John R. Mengel".

John R. Mengel
Acting Deputy Administrator
Dairy Programs